

**IN THE HIGH COURT AT CALCUTTA**  
**Civil Appellate Jurisdiction**  
**APPELLATE SIDE**

Present:

**The Hon'ble Justice Tapabrata Chakraborty**  
**&**  
**The Hon'ble Justice Partha Sarathi Chatterjee**

**MAT 638 of 2021**

[Ref File : WPA 20595 of 2022]

RAJIB BRAHMA AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

**AND**

IA NO: CAN/99/2024, CAN/140/2024,  
CAN/141/2024, CAN/142/2024, CAN/143/2024,  
CAN/144/2024, CAN/145/2024, CAN/146/2024,  
CAN/147/2024, CAN 148/2024, CAN 149/2024  
and CAN /150/2024

With

**FMA 1233 of 2021**

DEBASISH MUDI AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

**AND**

IA NO: CAN/1/2021, CAN/2/2023

with

**FMA 1248 of 2021**

MD IRSHAD ALAM AND ORS.  
VS  
STATE OF WEST BENGAL AND ORS.  
and  
IA NO: CAN/1/2021

with  
**FMA 1255 of 2021**  
FARZANA NAAZ  
VS  
STATE OF WEST BENGAL AND ORS.  
and  
IA NO: CAN/1/2021

with  
**FMA 1256 of 2021**  
AKM MONIRUZZAMAN AND ORS.  
VS  
STATE OF WEST BENGAL AND ORS.  
and  
IA NO: CAN/1/2021

with  
**FMA 1259 of 2021**  
RABINDRANATH MURMU AND ORS.  
VS  
STATE OF WEST BENGAL AND ORS.  
and  
IA NO: CAN/1/2021, CAN/2/2021 & CAN/3/2023

With  
**FMA 128 of 2022**  
ARUNDHUTI SAMANTA AND ORS.  
VS

STATE OF WEST BENGAL AND ORS.

with

**FMA 131 of 2022**

SOUMYA DUTTA

VS

STATE OF WEST BENGAL AND ORS.

with

**FMA 1316 of 2021**

BIKASH CHANDRA PAHAN AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021

with

**FMA 149 of 2022**

DEEPTI MONDAL AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

with

**FMA 150 of 2022**

MOUSUMI SINHA

VS

STATE OF WEST BENGAL AND ORS.

with

**FMA 29 of 2022**

ANUP TALUKDAR AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

with

**FMA 30 of 2022**

DIPTI SARDAR AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

with

**FMA 85 of 2022**

SATARUPA NIYOGI AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021, CAN/2/2021 & CAN/3/2023

with

**FMA 86 of 2022**

BIJOY KUMAR SARKAR AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

with

**FMA 89 of 2022**

DIPANWITA ROY AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

with

**MAT 1036 of 2021**

SWAPNA BOURI AND ANR.

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 1037 of 2021**

MD AFIF MALLICK

VS

ABHIJIT GHOSH

and

IA NO: CAN/1/2021 & CAN/2/2021

with

**MAT 650 of 2021**

MANIRAJ GHOSH AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021, CAN/3/2023 & CAN/5/2023

with

**MAT 651 of 2021**

ANITA DEBNATH AND ANR.

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 655 of 2021**

CHHOTAN SAHA

VS

ABHIJIT GHOSH AND ORS.

and

IA NO: CAN/1/2021, CAN/2/2021, CAN/4/2022, &  
CAN/5/2023

with

**MAT 657 of 2021**

ANINDITA PRAMANIK

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021 & CAN/2/2021

with

**MAT 659 of 2021**

BIBHAS DOLUI AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 661 of 2021**

ARINDAM DAS

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021, CAN/2/2021, CAN/4/2021 &  
CAN/5/2023

with

**MAT 667 of 2021**

SK. JAMALUDDIN AND ORS.

VS

THE STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021 & CAN/2/2021

with

**MAT 671 of 2021**

SNEHANSU SEKHAR PANDA

VS

THE STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 673 of 2021**

SHILA DAS AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021, CAN/2/2021

with

**MAT 715 of 2021**

SOUMITA SARKAR AND ORS.

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 802 of 2021**

DAMAYNATI BANDYOPADHYAY

VS

STATE OF WEST BENGAL AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 872 of 2021**

SOMA MAJI AND ORS.

VS



MANIRAJ GHOSH AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 878 of 2021**

MRI SAHIM KABIRUL AND ORS.

VS

MANIRAJ GHOSH AND ORS.

and

IA NO: CAN/1/2021

With

**MAT 880 of 2021**

ASTA PADA SASMAL AND ORS.

VS

MANIRAJ GHOSH AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 883 of 2021**

SUTAPA MISHRA BHATTACHARYA AND ORS.

VS

MANIRAJ GHOSH AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 931 of 2021**

TAPAS PAL

VS

STATE OF WEST BENGAL AND ORS.

with

**MAT 981 of 2021**

MD. SERAJ KHAN AND ORS.

VS

JUYEL KUMAR DAS AND ORS.

and

IA NO: CAN/1/2021

with

**MAT 984 of 2021**

RANJANA ROY AND ORS.

VS

JUYEL KUMAR DAS AND ORS.

and

IA NO: CAN/1/2021

|                                                   |   |                                                                                                                                                                                                      |
|---------------------------------------------------|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the appellants<br>In [MAT 638 & 659 of 2021]. | : | Mr. Jayanta Kumar Mitra, Sr. Adv.,<br>Mr. Subir Sanyal,<br>Mr. Vishak Bhattacharyay,<br>Ms. Ruchira Chatterjee,<br>Mr. Sagnik Roy Chowdhury,<br>Mr. Sourojit Mukherjee,<br>Ms. Biyanka Bhattacharya. |
|---------------------------------------------------|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

For the applicants  
/appellants in

: Mr. Bikash Ranjan Bhattacharya, Sr. Adv.  
Mr. Firdous Samim,  
Ms. Gopa Biswas,  
Ms. Sampriti Saha.

[CAN 18 of 2022, 19  
of 2022, 24 of 2022,  
CAN 49 of 2023, CAN  
50 of 2023, CAN 57  
of 2023, CAN 63 of  
2023, CAN 74 of  
2023, CAN 82 of  
2023, CAN 91 of  
2023 in MAT 638 of  
2021, CAN 4 of 2022  
and CAN 5 of 2022 in  
MAT 655 of 2021].

For the applicant in  
[CAN 116 of 2024 in  
MAT 638 of 2021].

: Mr. Dibyendu Chatterjee,  
Mr. Siddhartha Roy,  
Mr. Soubhik Dere.

For the applicant in  
[CAN 60 of 2023,  
MAT 638 of 2021].

: Mr. Somesh Ghosh.

For the applicants in  
[CAN Nos.101 of 2024,  
CAN Nos. 103 of 2024,  
CAN Nos. 108 of 2024,  
in MAT 638 of 2021].

: Mr. Partha Sarathi Bhattacharyya,  
Mr. Babhru Bahan Bera.

For the applicants in

: Mr. Partha Sarathi Bhattacharyya Sr. Adv.,

CAN No.115 of 2024  
in MAT [638 of 2021]

Mr. Nilankar Banerjee.

For the applicants in  
CAN No. 144 of 2024  
In [MAT 638 of 2021]

: Mr. Sanjib Das,  
Sk. Abul Hasan.

For the applicant  
in CAN 30 of 2023  
in [MAT 638 of 2021]

: Mr. Vishak Bhattacharya,  
Ms. Sumita Sarkar.

For the applicants in  
[CAN No. 60 of 2023  
respondent nos.17-189  
& 493 to 534 in  
MAT 638 of 2021]

: Mr. Kalyan Bandyopadhyay, Sr. Adv.,  
Mr. Rahul Kumar Singh,  
Ms. Rajlakshmi Ghatak.

For the applicants  
in [CAN No. 72 of 2023,  
CAN No. 105 of 2024 &  
CAN 109 of 2024/  
appellants in  
MAT 638 of 2021  
and in CAN Nos.1, 2, 4  
/ 2021 & 5/  
2023 /appellants in  
[MAT 661 of 2021].

: Mr. Biswaroop Bhattacharya,  
Mr. Anindya Bose,  
Mr. Golam Mohiuddin,  
Ms. Puja Mondal.

For the applicants in  
[CAN No. 22/2022,  
CAN No. 25/2022,  
CAN No. 29/2022,  
CAN No. 34/2022,  
CAN No. 48/2023,  
CAN No. 69/2023,

: Mr. Anindya Bose.

CAN No. 113/2024].

For the applicant in : Mr. K.M. Hossain.  
[CAN Nos.96 & 107 of 2024].

For the applicants in : Mr. Biswarup Bhattacharya,  
[CAN 8 of 2024 Mr. Shounak Ghosh,  
in MAT 673 of 2021]. Mr. Skahawat Khandakar,  
Mr. Swati Jha.

For the applicant in : Mr. Dibyendu Chatterjee,  
[CAN 116/2024] Mr. Pritam Majumdar,  
Mr. Rahul Deb Goenka,  
Mr. Mainak SinghaBarma,  
Ms. Satabdi Das.

For the added applicants : Mr. Suman Sankar Chatterjee,  
in [CAN No. 27/2023, Mr. Santanu Maji,  
CAN No. 31/2023, Mr. Subhayu Das,  
CAN No. 35/2023, Ms. Shila Chatterjee.  
CAN No. 39/2023,  
CAN No. 41/2022,  
CAN No. 45/2023,  
CAN No. 53/2023,  
CAN No. 56/2023,  
CAN No. 67/2023,  
CAN No. 70/2023,  
CAN No. 71/2023,  
CAN No. 81/2023,  
CAN No. 86/2023  
MAT 638 of 2021].

- For the appellants in : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.,  
[FMA 1233 of 2021] Mr. Sudipta Dasgupta,  
Mr. Arkadeb Biswas,  
Mr. Saikat Sutradhar.
- For the added party in : Mr. Ali Ahsan Alamgir,  
[CAN No. 33/2023, Mr. Rabia Khatoon,  
CAN No. 40/2022 & Ms. Soma Mal,  
CAN No. 65/2023 Ms. Juel Rana.  
in MAT 638 of 2021].
- For the appellants in : Mr. Ashis Kumar Chowdhury,  
[MAT 715 of 2021] Mr. Rajib Ghosh,  
Mr. Babhru Bahan Bera.
- For the applicants/added : Mr. Ashis Kumar Chowdhury,  
parties in Mr. Rajib Ghosh,  
[MAT 638 of 2021] Mr. Babhru Bahan Bera.
- For the applicants in : Mr. Jayanta Bhattacharya,  
[CAN No.104/2024 Mr. Avik Pramanick.  
CAN No. 106/2024  
in MAT 638 of 2021].
- For the applicants in : Md. Aasif Iqbal,  
[CAN No. 2/2023, Mr. Ranojoy Chatterjee,  
CAN No. 95/2024, Mr. Tamal Singha Roy.

CAN No. 100/2024,  
CAN No. 102/2024,

CAN No. 119/2024,  
CAN No. 127/2024,  
CAN No. 128/2024,  
CAN No. 130/2024,  
CAN No. 134/2024,  
CAN No. 137/2024,  
CAN No. 138/2024  
in MAT 638 of 2021].

For the applicant in  
[CAN No. 125/2024 in  
MAT 638 of 2021].

: Md. Abdur Rakib.

For the appellant  
[MAT 671 of 2021].

: Mr. Subhrangsu Panda,  
Ms. Ina Bhattacharyya,  
Ms. Mithu Singha Mahapatra.

For the State in  
[FMA 1255 of 2021].

: Mr. Supriyo Chattopadhyay, Id. A.G.P.,  
Ms. Iti Dutta.

For the W.B.C.S.S.C.

: Dr. Sutanu Kumar Patra,  
Ms. Supriya Dubey.

For the State in  
[MAT 1037 &  
MAT 880 of 2021].

: Mr. Bhaskar Prasad Vaisya, Id. A.G.P.,  
Mr. Jaydip Banerjee.

For the State in  
[MAT 1316 of 2021,  
MAT 650 of 2021 and  
MAT 659 of 2021].

: Mr. Bhaskar Prasad Vaisya, Id. A.G.P.,  
Mr. Arindam Chattopadhyay,  
Ms. Lipika Chatterjee.

- For the State in : Mr. Bhaskar Prasad Vaisya, ld. A.G.P,  
[MAT 878 of 2021]. Mr. Suman Dey.
- For the State in : Mr. Bhaskar Prasad Vaisya, ld. A.G.P.,  
[MAT 1037 of 2021, Mr. Arindam Chatopadhyay,  
MAT 883 of 2021,  
FMA 1316 of 2021 and  
MAT 872 of 2021].
- For the State in : Mr. Bhaskar Prasad Vaisya, ld. A.G.P.,  
[MAT 880 of 2021]. Mr. Joydip Banerjee.
- For the State in : Mr. Bhaskar Prasad Vaisya, A.G.P.,  
[MAT 981 of 2021 & Ms. Jhuma Chakraborty.  
MAT 984 of 021].
- For the appellant in : Mr. Arindam Banerjee,  
[MAT 638 of 2021]. Mr. Pranit Bag,  
Mr. Raja Baliyal,  
Mr. Rajarshi Ganguly.
- For the Petitioner in : Mr. Sandip Kumar De,  
[MAT 657 of 2021]. Mr. Avijit Sarkar.
- For the State in : Mr. Danur Dutta,  
[FMA 1233 of 2021]. Mr. Rajat Dutta.
- For the State in : Mr. Jahar Dutta,  
[MAT 715 of 2021] Mr. Bipin Ghosh.



For the W.B.B.S.E. : Ms. Koyeli Bhattacharyya.

For the applicant in : Mr. Tarun Kumar Das.  
[CAN No. 83/2023].

For the applicant in : Mr. Dibyendu Chatterjee,  
[CAN No. 116/2024]. Mr. Sauvik De Re,  
Mr. Siddhartha Roy.

For the applicants in : Mr. Saunak Ghosh,  
[CAN No. 8/2024 Mr. Sakhawat Kandakar,  
& CAN No. 9/2024 Ms. Swati Jha.  
in MAT 673/2021].

For the applicants in : Mr. Sougata Mitra,  
[CAN No. 136/2024]. Mr. Nikhil Kr. Gupta.

For the applicants in : Mr. Ali Ahsan Alamgir,  
[CAN No. 33/2024, Ms. Soma Mal,  
CAN No. 65/2024, Ms. Rabia Khatoon,  
CAN No. 40/2024]. Mr. Jane Modak.

For the applicant in : Md. Abdur Rakib.  
[CAN No. 125/2024].

For the added parties : Mr. Ashis Kumar Chowdhury,  
Mr. Rajib Ghosh,  
Mr. Babhru Bahan Bera.

For the applicants in : Mr. Partha Sarathi Bhattacharyya,  
[CAN No. 115/2024, Mr. Nilankar Banerjee.  
CAN No. 101/2024,  
CAN No. 103/2024,  
CAN No. 108/2024].

For the MHRD : Mr. Kumar Jyoti Tewari.

For the State in : Mr. Arindam Chattopadhyay,  
[MAT 1659 of 2021, Ms. Lipika Chatterjee.  
FMA 1316 of 2021,  
MAT 1872 of 2021,  
MAT 883 of 2021].

For the NCTE : Ms. Asha G. Gutgutia.

Hearing is concluded on : 18<sup>th</sup> July, 2024.

**Judgment On : 28<sup>th</sup> August, 2024.**

**Tapabrata Chakraborty, J.**

1. In the dispensation of justice, Courts are prevented from innovating at pleasure. Neither can they don the helmet of a *'knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness'*. At all times, Courts are expected to draw *'inspiration from consecrated principles.'* [See Benjamin

*Cardozo, 'The Nature of Judicial Process']*. Bearing such principle in mind, this Court cannot help but observe that there may arise certain situations which require untangling of a complicated mesh of competing rights; where the Court may be required to innovate, not at pleasure but within the realm of perennial common law, principles of equity and good conscience, so as to arrive at an equilibrium of rights i.e., find the best possible solution. Today, this Court finds itself in the midst of one of such situations. The selection of more than 14,000 candidates, is under challenge in the present proceedings. As a natural consequence thereof, their right to livelihood and right to freedom of choosing a profession of their choice, hang in the balance. At the same time, candidates who have assailed the present selection process, are vying for an equal opportunity to participate in a fair selection process which has been allegedly denied to them. Wedged between these competing rights, the fundamental right to education of school children, has remained suspended in a state of limbo. While there may not be enough material to suggest that the school children have received no pedagogical guidance during these past years, it is a reasonable presumption that their education has suffered. There remains little doubt that education is a tool for the betterment of our civil institutions and paves the path to an informed and questioning citizenry. In the years since the inclusion of Article 21-A, it has been reiterated on numerous occasions that the right to education attaches to the individual as an inalienable human right. Since 2016, such inalienable human right has been held hostage by litigation over the propriety of the selection process of qualified school teachers. In other words, the future of children which is often synonymised

with the future of this country, has remained in a state of flux and uncertainty over the past eight years. In the said conspectus, whilst arriving at a final decision in the present appeal proceedings, this Court cannot be unmindful of the pressing need to conclude an already protracted litigation so as to *inter alia*, determine the rights of the appellants vis-à-vis the respondents and ensure that the children who find themselves in the proverbial eye of the storm, are able to realise their fundamental right to education to the fullest extent possible.

2. With these observations in mind, this Court shall now proceed to decide the thirty-six appeals which arise out of similar orders passed by the learned single Judge in several writ petitions pertaining to the 1<sup>st</sup> State Level Selection Test, 2016 for recruitment of Assistant Teachers in (Upper Primary Except Physical and Work Education) in Government aided/Sponsored Schools (except hilly region) (in short, the 2016 SLST) initiated by a notification dated 23<sup>rd</sup> September, 2016. Since an identical question of law is involved, all the appeals have been heard analogously. The individual facts in the writ petitions may slightly differ but the legal arguments broadly overlap.

3. The 2016 SLST was conducted in terms of the West Bengal School Service Commission (Selection for Appointment to the Posts of Teachers for Upper Primary Level of Schools), Rules, 2016 (in short, the 2016 Rules). The interview list and the merit list were published on 24<sup>th</sup> August, 2019 and 4<sup>th</sup> October, 2019 respectively. The said selection process was challenged in a bunch of analogous writ petitions which were finally decided on 11<sup>th</sup> of

December, 2020. By the said judgment, the entire selection process was set aside and the West Bengal School Service Commission (in short, the Commission) was directed to hold a fresh selection process of all the candidates, who were found to be eligible under rule 12 (2) of the 2016 Rules and to proceed onwards from that stage. The Commission was also directed to verify the validity of the Teacher Eligibility Test certificate (in short TET), academic and professional qualifications etc. as provided under rule 12 (3) of the 2016 Rules. By the said judgment a time frame was also stipulated towards conclusion of the verification process, publication of the interview lists, the merit lists and the subsequent stages of constituting a panel including issuance of recommendation. Pursuant to such direction, the Commission initiated the verification process *vide* notification dated 28<sup>th</sup> December, 2020 and the candidates were allowed to upload their documents. Thereafter by a notification dated 19<sup>th</sup> June, 2021 the interview list (in short, IL) was published by the Commission disclosing that the total number of final vacancies excluding 10% reserved for Para teachers was 14,339. In the midst thereof, one Moumita Ghosh and others claiming to be the merit listed candidates published on 4<sup>th</sup> October, 2019 preferred an application for leave to appeal against the judgment dated 11<sup>th</sup> December, 2020. The said application was allowed but the appeal was finally heard and dismissed by an order dated 12<sup>th</sup> January, 2021 passed by a coordinate Bench of this Court in MAT 843 of 2020 observing *inter alia* that such dismissal shall not prejudice the rights of the appellants to participate in the verification process in terms of the notification dated 28<sup>th</sup> December, 2020 issued under Rule 12(3) of the 2016 Rules. Thereafter, one Abhijit Ghosh

preferred a writ petition being WPA 10789 of 2021 alleging *inter alia* that the selection process was not being conducted in consonance with the judgment dated 11<sup>th</sup> December, 2020. In the said writ petition initially, an order was passed on 30<sup>th</sup> June, 2021 restraining the Commission from conducting the interview. The said order was subsequently modified by an order dated 2<sup>nd</sup> July 2021 directing the Commission to disclose the break-up of marks of the candidates, who have not been named in the IL as well as the persons who have been named. In compliance of such direction, the Commission published the new lists with break-up of marks and the reasons for not bringing a candidate in the IL. Considering the same, the learned single Judge passed an order of 9<sup>th</sup> July, 2021 directing the Commission to take care of the grievance of the candidates, whose names have not been included in the IL, upon granting a personal hearing to the candidates, who would file representations individually. A time frame was also stipulated for communication of the orders to the candidates and the interim order passed earlier was recalled. In the midst thereof, another writ petition was filed by one Rajib Brahma & Ors. which was also disposed of on 9<sup>th</sup> July, 2021 itself with a liberty to the writ petitioners to approach the Commission by filing representation individually and a time frame was also stipulated towards communication of the decisions. Aggrieved by the said orders and similar orders passed in other writ petitions, the present appeals were preferred. The said appeals were heard analogously with consent of the parties on 20<sup>th</sup> July, 2021 and by way of an interim order the Court directed as follows :

*‘First, the Commission shall continue to hold the interviews of all the candidates whose names appear for the personality test.*

*Second, the Commission shall conclude the interview, grant marks in the personality test and prepare a panel of the successful interviewees.*

*Third, the Commission shall not grant appointments from the panel of successful interviewees without the leave of the Hon’ble Court.*

*Fourth, the Commission shall prepare a clear data base of the successful candidates in the personality test which shall include, among others, the actual/statutory marks of the individual candidates in terms of their certificates, qualification specified by Rule 12 of the 2016 Rules, plus the weightage given against each such actual/statutory marks plus the marks obtained in the personality test and, on the basis of such procedure their individual relative position in the combined merit list.*

*Fifth, the Commission shall simultaneously proceed with the redressal mechanism set in place by the Hon’ble Single Bench of the aggrieved candidates.*

*Sixth, at the end of the time period for completing the Grievance Redressal Mechanism, the Commission shall produce charts in respect of the aggrieved candidates containing their actual/statutory marks, the weightage granted against each of them under Rule 12 and keeping the space for personality test marks blank as well as stating any other issue of particular relevance to the aggrieved candidates.*

*Seventh, on the next date, the Commission shall place both the combined merit list data base of the candidates actually interviewed in terms of the directions given above as well as the data base reflecting the redressal mechanism of the aggrieved candidates before this Court for further directions, if any. The Commission should also maintain at its disposal for production before the Court, when necessary, the original data base of the merit listed candidates at the time of filing their applications for selection in 2016.*

*It is made clear that equity shall not be created in favour of any party by any of the actions taken above. The directions in this order are in fulfilment of the mandate of Rule 12 of the 2016 Rules which stands affirmed by the judgment and order of the Hon'ble Single Bench dated 11<sup>th</sup> December, 2020'.*

4. The said appeals were again heard on 10<sup>th</sup> November, 2021 when the Court extended the time for disposal of the representations by the Commission and also allowed the Commission to depute Group A officers from the rank of Assistant Director or equivalent and upwards instead of officers not below the rank of Secretary for effective disposal of the representations. By the said order, applications for addition of party filed by the candidates, who were earlier selected by the Commission were also allowed. The further prayer of the said applicants towards publication of the merit list was, however, refused. In the pending appeals, the Commission thereafter filed an affidavit bringing on record the facts and figures of the representations submitted by the candidates in terms of the orders impugned in the said appeals. By the said affidavit, affirmed on 12<sup>th</sup>



September, 2022, the Court was apprised that upon consideration of the representations, the Commission had found 1585 candidates to be genuine and they were allowed to upload their documents. However, the prayer for publication of the merit list and issuance of recommendation was not entertained. Thereafter, by an order dated 30<sup>th</sup> September, 2022, the Commission was permitted to complete the personality test (in short, PT) of 1585 candidates and by an order dated 16<sup>th</sup> August, 2023, the Commission granted leave to publish the panel along with the waitlisted candidates along with vacancy position within a week. Pursuant thereto, the Commission published a provisional panel of 13333 candidates. The observations in the interim orders passed in the present appeals had not been challenged.

5. Mr. Sanyal, learned advocate appearing for the appellants submits that the Commission had not conducted the selection process in consonance with the directives contained in the judgment dated 11<sup>th</sup> December, 2020. Though Rule 13 (11) of the 2016 Rules and clause 11 of the information brochure prohibited revaluation/reassessment of OMR marks, the Commission had acted contrary to the same and had re-evaluated/reassessed the OMR marks as per its whims and choice. The original OMR sheets were admittedly not available and the Commission had revaluated/reassessed on the basis of scanned copies of original OMR sheets which creates serious doubt as regards genuineness of such revaluation/reassessment. In the absence of the original OMR sheets, results published eight years before cannot be treated as final or conclusive. As a consequence, thereof, genuine candidates have been illegally ousted

from the zone of consideration. In support of such contention, he has drawn the attention of this Court to the documents downloaded from the Commission's *website*.

6. He contends that reserved category candidates (SC/ST/OBC-A/OBC-B) on the basis of merit (academic marks, marks of training qualifications and TET weightage) have been included and considered as General Category candidates at the time of preparation of the IL category-wise and subject-wise in violation of Rule 12(4) of the 2016 Rules. Such inclusion of reserved category candidates in the General Category violates category-wise preparation of IL on the merit of candidates belonging to General Category. Here, merit of each candidate relates to his/her own category. The word '*category*' is defined in Rule 2(j) of the Rules of 2016. Migration of reserved category candidates in the General Category on merit is not at all permissible at the interview stage. Because of such illegal action, lesser number of General Category candidates had been included in the IL meant for General Category and, on the contrary, in respect of SC/ST/OBC-A/OBC-B/PH categories, candidates belonging to the said categories equal to the ratio of 1:1.4 could not be called upon at all. Had the IL for General Category candidates been prepared only with General Category candidates, on merit, not only more number of General Category candidates could have come within the zone of 1:1.4 ratio but also equally more number of candidates in respect of SC/ST/OBC-A/OBC-B/PH categories could have been called for interview. The inclusion of reserved category candidates not only constitutes violation of Rule 12(4) of the 2016 Rules but also infringes

the guarantees enshrined in Articles 14 and 16 of the Constitution of India. For such act, against 14339 vacancies, only 17024 candidates were called for interview instead of 20075 candidates on 1:1.4 ratio. This illegality goes to the root of the matter, and maligns the entire selection process and mere participation in the same cannot debar the participants from challenging the same moreso when there had been misconstruction of statutory rules and discriminating consequences. Reliance has been placed upon the judgments delivered in the cases of *Indra Sawhney versus Union of India and Others*, reported in 1992 Suppl. (3) SCC 217 (para 812), *Union of India versus Ramesh Ram and Others*, reported in 2010 (7) SCC 234, *Cherukuri Mani versus Chief Secretary, Government of Andhra Pradesh and Others*, reported in (2015)13 SCC 722, *Ashok Lanka and Another versus Rishi Dixit and Others*, reported in 2005 (5) SCC 598 and *Jayashree versus State of Maharashtra*, reported in 2006(3) Mh. L.J..

7. Drawing our attention to the advertisement, Mr. Sanyal submits that in clause 8 of the said notification dated 23<sup>rd</sup> September, 2016 it had been categorically stated that final vacancies may increase due to creation of new vacancies. The final vacancy list was published by the Commission in derogation to the provisions of Rules 8 and 9 of the 2016 Rules. No report was obtained from the Commissioner of School Education as regards the number of vacancies available subject wise, medium wise, gender wise, category-wise prior to publication of the final list. Indisputably, there was an increase of 1660 vacancies between the period from publication of the advertisement till the date of publication of the final vacancy list on 21<sup>st</sup>

June, 2021. The Commissioner of School Education *vide* memo dated 15<sup>th</sup> February, 2019 intimated the West Bengal Board of Secondary Education (in short, the Board) as regards allotment of further 5108 vacancies of teaching posts in 1703 new setup upper primary schools in pass graduate category. The said vacancies ought to have been included in the final vacancy list.

8. He argues that no Teacher Eligibility Test (in short, TET) has been held after the year 2015 and therefore there cannot be any candidate becoming qualified for recruitment as assistant teachers for upper primary level schools during the interregnum period between 23<sup>rd</sup> September, 2016 (date of publication of the advertisement) till 21<sup>st</sup> June, 2021 (date of publication of the purported final vacancy list) and as such no prejudice would be caused to any candidate for inclusion of the vacancies arising during the aforesaid interregnum period.

9. He contends that non-preparation of the final vacancy list as per Rules also goes to the root of the matter for the simple reason that a candidate who has not received interview call for lack of vacancy, could have got a berth in the merit list on the basis of total marks in case of preparation of actual vacancy list as per Rules (Academic + Interview). For example, in Pure Science (General Male/Female category); academic, training and TET score of Rajib Brahma, who did not get a call for interview, is 73.88 out of 90, whereas one of the lowest scoring candidates namely-Anirban Chandra (Roll No. 20115100001961), who was in the interview list and got a call for interview obtained 75.86 out of 90 and subsequently he secured his position in the list of empaneled candidates at Sl.No.1408. The difference between the

said two candidates is 1.98 marks. Had the final vacancy list been prepared as per Rules, Rajib Brahma surely would have got a call for interview and accordingly upon his marks of interview, he could have got empanelment in the merit list.

10. Mr. Bikash Ranjan Bhattacharya, learned senior advocate appearing for the applicants in CAN 70 of 2024 filed in connection with M.A.T 638 of 2021 submits that due to the irresponsibility of the Commission, the candidates participating in the selection process had been the worst sufferers. Less meritorious candidates were sought to be brought within the zone of consideration by an absurd process of reassessment and rechecking of OMR sheets after publication of the final merit list. Such procedure as adopted by the Commission and as explicit from the averments made in affidavit affirmed by the Commission on 27<sup>th</sup> March, 2023, is arbitrary and *mala fide*.

11. He argues that the Commission had altered the marks obtained by the candidates on the basis of scanned copies of original OMR sheets of the candidates. Such practice as undertaken does not stand fortified by the statutory provisions. Without even having the custody of original OMR marks, the Commission could not have acted on the basis of scanned copies. The entire process towards reassessment and revaluation after publication of the final merit list, is absolutely without jurisdiction and as a consequence thereof, thousands of candidates have been arbitrarily ousted from the selection process.

12. He further argues that the Commission could not have altered the marks on the basis of a mere hunch that as a white mark was mostly put in spaces provided in the OMR sheet for bubbling the chosen option that is, A or B or C or D in response to a particular question, a presumption may be drawn that the candidate's marked option had been covered by white mark and he may be accorded marks for options marked since he would not leave any answer un-attempted as there was no negative marking. From the said sequence of facts, it is explicit that no transparency had been maintained and the Commission as per its whims and choices conducted the selection process in an arbitrary and *mala fide* manner. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that the Commission had practiced discrimination and sought to crib and confine the dynamic concept of equality.

13. Drawing our attention to the definition of category, the interview list, merit list, panel and waiting list under Rule 2(b), 2(e), 2(f), 2(g) *vis-à-vis* Rule 12 (4), Mr. Jayanta Mitra learned senior advocate appearing for another set of appellants submits that the Commission was bound to prepare the IL 'category-wise on the basis of merits' but such procedure was admittedly not followed and as a consequence thereof, many general candidates, who would have come within the zone of consideration had there been preparation of such IL category-wise, were illegally excluded. Such migration of reserved category candidates into unreserved category is a procedure adopted in derogation to the dictum of the Constitutional Bench judgment delivered in the case of *Indra Sawhney (supra)*. Reliance has also been placed upon the

judgments delivered in the cases of *Rajesh Kumar Daria versus Rajasthan Public Service Commission and Others*, reported in (2007) 8 SCC 785 and *Union of India and another versus Hemraj Singh Chauhan and others*, reported in (2010) SCC 290.

14. Mr. Ashis Choudhury, learned advocate appearing for the appellants in MAT 715 OF 2021 submits that all the appellants therein were included in the merit list prepared in the earlier selection process which was ultimately set aside in the earlier round of litigation. Now while conducting the selection process afresh, the Commission had travelled beyond the tethers fixed by the learned single Judge as affirmed by the Hon'ble Appeal Court and the appellants have been illegally excluded from the IL.

15. He argues that the TET marks of the appellants could not have been reassessed in the manner it has been done. The appellants in the present appeal are not challenging the selection process but had the same been conducted in strict consonance with the directives given by the Court in the earlier round of litigation, they would not have been excluded from the IL. Without any reason and without returning any finding on the issues urged, the writ petition preferred by the appellants being WPA No. 10986 of 2021 had been erroneously dismissed observing *inter alia* that the application suffers from multifariousness. During the pendency of the appeal being MAT 715 of 2021, the appellants filed representations ventilating their grievances responding to the notification issued by the Commission on 10<sup>th</sup> July, 2021. However, the said representations were dismissed by cryptic

orders without considering the specific allegations levelled against the Commission.

16. He further argues that the Hon'ble Court during the pendency of this appeal and without rectifying its mistakes towards inclusion of names of some candidates on the basis of 1<sup>st</sup> reassessment of TET marks, which was cancelled by the Court on 11th December, 2020, names of some candidates were included by increasing the TET marks after rechecking the OMR of only merit listed candidates and not of all candidates. The Commission had also illegally included the names of some untrained candidates increasing the academic marks.

17. He contends that the appellants were included in the 1<sup>st</sup> merit list after reassessment of the TET marks and subsequently their names were excluded from the second merit list without showing any *bona fide* reason and the Commission till date has not published the marks obtained by the candidates before reassessment of TET marks and after reassessment of TET marks of all candidates, as such the appellants are not in a position to ascertain the reason behind their exclusion and in such circumstances the Commission is bound to publish the TET marks of all the candidates before assessment and after assessment simultaneously, otherwise the appellants will suffer irreparable loss and injury.

18. Mr. Kalyan Bandopadhyay, learned senior advocate appearing on behalf of the applicants in CAN 60 of 2023 and CAN 493 to 534 filed in connection with M.A.T 638 of 2021 submits that bereft of foundational facts, the writ petitions have been preferred with a sole intent to interdict the



selection process which could not be completed due to repeated litigations since the year 2016. The arguments as advanced on behalf of the appellants do not stand fortified by appropriate pleadings. The Court cannot act as a fact-finding authority and sit in appeal over such assessment. The verification procedure as adopted by the Commission is in consonance with the statutory provisions and the directions contained in the judgment dated 11<sup>th</sup> December, 2020. On the drop of a hat, a selection process involving more than 15000 candidates cannot be interfered with. The argument that the new posts created should be included in the selection process is not acceptable since the same would enhance the field of choice. The candidates invited to participate in a particular selection process will constitute a specified zone of consideration. Reliance has been placed upon the judgments delivered in the cases of *Rakhi Ray versus High Court of Delhi*, reported in (2010) 2 SCC 637, *High Court of Kerala versus Reshma A. and Others*, reported in (2021) 3 SCC 755 and *Anurag Kumar Singh and Others versus State of Uttarakhand and Others*, reported in (2016) 9 SCC 426.

19. He argues that in the writ petitions there is no averment that the selection was sham. The learned single Judge upon considering the arguments as advanced had rightly relegated the matter for consideration to the competent authority. It is well settled that the disputed questions of facts cannot be gone into in exercise of the authority of judicial review and in the absence of any flaw in the decision-making process. The Court cannot conduct a roving enquiry on the factual aspects while testing the fairness of the selection process wherein thousands of candidates were involved. In

support of the arguments advanced, reliance has been placed upon the judgments delivered in the cases of *Bharat Singh and Others versus State of Haryana and Others*, reported in (1988) SCC 534, *Sadananda Halo versus Momtaz Ali Sheikh*, reported in (2008) 4 SCC 619, *Tazbir Singh Sodhi versus State of Jammu and Kashmir and Others*, reported in 2023 SCC OnLine SC 344, *Anupal Singh versus State of U.P.*, reported in (2020) 2 SCC 173 *Madan Lal versus State of Jammu and Kashmir*, reported in (1995) 3 SCC 173, *Sachin Kumar and Others versus Delhi Subordinate Service Selection Board*, reported in (2021) 4 SCC 631, *Inderpreet Singh Kahlon and Others*, reported in (2006) 11 SCC 356.

20. Mr. Mukherjee, learned senior advocate appearing for the Commission denies and disputes the contention of the appellants and submits that by the judgment dated 11<sup>th</sup> December, 2020 the learned single Judge directed the Commission to hold a fresh selection process of all the candidates, who were found to be eligible under Rule 12 (2) of the 2016 Rules and to proceed onwards from that stage. Rule 12 (3) of the said rules explicitly permits the Commission to '*verify the validity of the TET certificates*' and the '*marks obtained in TET*'. In terms of such direction rechecking of TET marks was done to maintain the sanctity and purity of the selection process and to safeguard against possible discrepancies in the computation of marks. No prejudice can be claimed to have been caused to any candidate since such rechecking was not akin to giving the candidates '*2<sup>nd</sup> chance*' at improving their scores for other purpose. There is also no allegation that

such correction of TET marks had deprived anyone of any opportunity to exercise any particular option between TET 2011 or TET 2015.

21. He contends that the argument advanced on behalf of the appellants to the effect that the vacancies for the upper primary teachers were not notified in terms of Rule 9 (3) read with Rule 8 (3) (b) of the 2016 Rules needs to be discounted since reporting of vacancies under the said Rules was in respect of vacancies that are reasonably contemplated to be covered by the selection process but could not be quantified with certainty at the time of such reporting. A composite reading of the 2016 Rules does not contemplate that such reporting ought to have also included the future vacancies. The tentative number of vacancies were specified in the notification dated 23<sup>rd</sup> September, 2016 and the final vacancy figure was published during pendency of the earlier writ petition being WPA 9597 of 2019 on 11<sup>th</sup> November, 2019. It is important to be noted that in the earlier order judgment dated 11<sup>th</sup> December, 2020 there was even no direction upon the Commission to calculate vacancies afresh.

22. Placing reliance upon the judgments delivered in the cases of *LT.CDR. M. Ramesh versus Union of India and Others*, reported in (2018) 16 SCC 195, *S. Prakash & Another, versus K. M. Kurian & Others*, reported in 1993 Supp (2) SCC 600, *State of Bihar and Others versus Secretariat Assistant Successful Examinees Union 1986 and Others*, reported in (1994) 1 SCC 126, *High Court of Kerala versus Reshma A. and Others*, reported in 2021 (3) SCC 755 and *Anurag Kumar Singh and Others versus State of Uttarkhand and Others*, reported in (2016) 9 SCC 426, Mr. Mukherjee argues

that the State cannot be compelled to fill up all vacancies which may be available at any given point of time and no candidate can claim any indefeasible right to be appointed in the said vacancies. A selection process can account for '*actual vacancies*' and '*anticipated vacancies*' but no '*future vacancies*' as it would deprive the chance of prospective candidates and would not conform to the requirements of Articles 14 and 16 of Constitution of India.

23. He further argues Rule 2(e), 2(f) and Rule 12(4) of the 2016 Rules provide that a merit list ought to be prepared as mentioned in part A of Schedule II of the 2016 Rules and the names of the candidates appearing in such merit list should be organized category-wise. The said Rules cannot be read in a manner to make the unreserved category to be a closed category meant for candidates who do not belong to reserved category. It is well settled that the unreserved category is an open category and candidates belonging to reserved category can be placed in the unreserved category if on merit they fared better than the last placed candidate. Reliance has been placed upon the judgment delivered in the case of *Indra Sawhney versus Union of India and Others*, reported in 1992 Supp (3) SCC 217.

24. Drawing our attention to the judgments delivered by co-ordinate Benches of this Court in WPST 34 of 2022 and WPST 9 of 2022, Mr. Mukherjee submits that migration of reserved category candidates to unreserved category is permissible even after the reserved category candidates had availed of relaxation of age and fees to become eligible to participate in the selection process.

25. According to Mr. Mukherjee, the argument advanced on behalf of the appellants that the IL, as published, do not conform to the ratio of 1:1.4 needs to be dealt with on the rider as to whether any prejudice has been caused to the appellants more so when, as per the orders of the Court the candidates/writ petitioners in various writ petitions were granted leave to appear before the grievance redressal committee and many candidates were thereafter allowed to participate in the PT post grievance hearing.

26. According to him, some of the appellants and the added applicants had as a last resort levelled allegations of bias and favoritism while challenging the marks obtained by them in the PT as granted by an expert body constituted in the terms of the statutory provisions. This Court cannot be asked to conduct any roving inquiry on the rudiments of such vague allegations more so when a candidate having participated in the selection process cannot turn back and challenge the same since the results are not palatable. Reliance has been placed upon a comprehensive chart on the progress of the selection process, the orders passed in the earlier proceedings and the full particulars of the candidates alleging illegal exclusion, as annexed to the law notes.

27. In reply, Mr. Sanyal submits that no unreserved category has been defined under the Rules. Interview stage is not selection and migration of candidates ought to have been at the Rule 12(6) stage. The candidates have thus been deprived of a level playing ground. None of judgments upon which reliance has been placed on behalf of the Commission speaks of migration of

the candidates at the interview stage and accordingly the said judgments are distinguishable.

28. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

29. The phrase '*category-wise on the basis of merit*' features both in Rule 12 (4) and Rule 12 (5) of the 2016 Rules. In the former, the phrase stands suffixed with a sentence '*as mentioned part A of Schedule-III*' and in the latter, the phrase stands suffixed with a sentence '*weightage of TET, academic and professional qualification and marks obtained in personality test) as part A of Schedule-III*'. As is known, every word of statute must be given an interpretation. The fundament of the principle is that the legislature does not use any word or expression in a statute without any purpose. The phrases read together reflects categorization of all participating candidates on merit. In the said context it would be inappropriate to contend that the inclusion of all the candidates (SC/ST/OBC-A/OBC-B) in the general category at the time of preparation of the IL would be violative of the provisions of the concerned Rules. The unreserved category/open category is inextricably bound with the term category. In view thereof, the word category-wise in the Rules cannot be read to be non-inclusive of unreserved category/open category.

30. An '*open category*' refers to a group of classification inclusive of everyone or anyone who meets the general requirements and it does not discriminate based on any specific characteristic like age, gender or

background. In the context of merit-based evaluation, '*the open category serves as a general category*'. So, while '*open category*' might seem like an oxymoron, it actually represents a distinct group within a classification system. It is well settled that reserved category candidates may compete for non-reserved post and if they are appointed to the non-reserved post on their merit, their number will not be counted against the quota reserved for the respective category. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SC's has been filled up. The analogy that follows is that at the inception of the selection process all the candidates irrespective of their categories need to compete on merits and only thereafter question of preparation separate lists may follow. In the said conspectus, the argument of Mr. Sanyal that migration of the candidates ought to have been permitted at the time of appointment and not at the time of preparation of the IL is not acceptable to this Court.

31. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases. There is no dispute as regards the proposition of law laid down in the cases of *Ramesh Ram (supra)*, *Ashok Lanka (supra)* and

*Cherukari Mani (supra)*, upon which reliance has been placed by Mr. Sanyal, but they are distinguishable on facts.

32. The proposition of law that can be culled out from the judgments upon which reliance has been placed by Mr. Bandopadhyay, is that the Court cannot get engaged in a non-permitted fact-finding exercise and while testing fairness of a selection process involving thousands of candidates, Court should be slow in relying upon microscopic findings on the rudiments of issues not appropriately pleaded in the writ petition. Having participated in the selection process with no demur or protest, the participants cannot turn back and challenge the same. Innocents and wrongdoers cannot be treated equally by subjecting the former to cancellation of the selection process which would be contrary to Article 14 of the Constitution.

33. The notification for the 2016 SLST was published on 23<sup>rd</sup> September, 2016, the IL were published on 28<sup>th</sup> June, 2019. A tentative merit list was published on 4<sup>th</sup> October, 2019 and the final vacancy list was published on 11<sup>th</sup> November, 2019. Thereafter several writ petitions were filed which were ultimately disposed by the judgment dated 11<sup>th</sup> December, 2020 setting aside the entire selection process. In the said writ petitions no issue was urged as regards migration of the candidates under different categories at the time of preparation of IL. No argument was also advanced on behalf of the writ petitioners that creation of new vacancies in between the period from the date of initiation of selection process till the date of the judgment should be included in the said selection process. On the contrary it was the direction of the learned single Judge, as affirmed in appeal, that



the Commission shall *'hold a fresh selection process of all the candidates who were found to be eligible under Rule 12 (2) and proceed onwards from that stage'*. In view thereof, the appellants are estopped from agitating the said issues in the present appeal. Once a process of selection is annual, notification of probable or anticipated vacancies must be for the concerned selection year. Any recruitment over and above the notified vacancies is impermissible in law. Such proposition cannot be nullified only on the ground that the term '*vacancy*' as defined in Rule 2 (1) (p) includes '*creation of a new post*'. The said definition is general and not selection centric and it cannot be construed to bring a post newly created within the ambit of the selection process.

34. After cancellation of the selection process by the judgment dated 11<sup>th</sup> November, 2020, the Commission was directed to hold a fresh selection process of all the candidates who were found to be eligible under Rule 12 (2) which pertains to preparation of lists of eligible candidates for the purpose of preparation of a computer-generated data base of all the candidates. Thus, the quantum of participants in the selection process directed to be continued further from the stage 12 (2) remained unaltered to be tested for appointment. In the said conspectus, allowing the same set of candidates to compete for vacancies included in the earlier final vacancy list together with the newly created vacancies would enhance the scope selection for the candidates enlisted under Rule 12 (2) to the detriment of the prospective candidates in future selection process.

35. In course of hearing of the present appeals, the Commission affirmed four supplementary affidavits on 12<sup>th</sup> September, 2022, 27<sup>th</sup> March 2023, 28<sup>th</sup> April 2023 and 29<sup>th</sup> August, 2023 respectively. In the said supplementary affidavits it has been disclosed that the final vacancies as on 11<sup>th</sup> November, 2019 were 14,339 excluding 10% vacancies reserved for Para teachers. In total 2,28,660 candidates applied. Upon considering the said applications and upon conducting PT, a merit list was finally published on 4<sup>th</sup> of October, 2019. The same was ultimately set aside by the judgment dated 11<sup>th</sup> of December, 2020. Proceeding afresh for selection of candidates, the Commission published an IL consisting of 15436 candidates with all details on 8<sup>th</sup> July, 2021. The said candidates were thereafter called for PT amongst whom 12,778 candidates appeared. Thereafter, in compliance of the orders passed in the writ petitions from which the present appeals have been preferred, 18,436 candidates were called for grievance redressal hearing. 3329 candidates were absent on the date of hearing and another list was published on 15<sup>th</sup> October, 2022 consisting of 1585 candidates, who were called for PT test upon obtaining leave of the Hon'ble Court on 30<sup>th</sup> September, 2022. Further three more candidates were called for PT as they were inadvertently left out. Amongst them, 1507 candidates appeared and 233 candidates were removed as they were ineligible. Thus, in total  $12778(\text{First Phase}) + 1588(\text{Second Phase}) = 17024$  were called for the PT, amongst whom 40 candidates were common and accordingly,  $17024 - 40 = 16984$  candidates were actually called for PT. Amongst them, 14052 candidates appeared in the PT. After completion of such PT, the Commission rechecked the credentials of the said candidates (14052) and detected

irregularities pertaining to 1463 candidates amongst whom, in respect of two candidates, there was a class category mismatch. In respect of 559 candidates there was a mismatch of marks. In respect of 902 candidates, the OMR sheets were defaced. Thus, the total size of the merit list was  $14052 - 1463 = 12589$  candidates. Subsequently, the defaced OMR sheets of 920 candidates were further scrutinized and 821 candidates came within the zone of consideration upon exclusion of 81 candidates who had mismatch of marks. The result of such exercise was summarized in a table form as follows:

|    |                                                                                                                                                  |                   |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| a. | Total size of merit list (panel/waiting list) as per previous affidavit                                                                          | 12589             |
| b. | Declared disqualified on account of defaced OMR with marks mismatch in our earlier affidavit                                                     | 902               |
| c. | Declared disqualified on account of defaced OMR with marks mismatch on the basis of presumption re-evaluation now                                | 81                |
| d. | Declared disqualified after re-checking academic score and other credentials                                                                     | 71                |
| e. | Net additional inclusion in the zone of consideration for being merit listed over and above the 12589 already mentioned in our earlier affidavit | 750<br>(821 – 71) |
| f. | Total size of the merit list pursuant to the re-evaluation<br>$12589 + 821 - 71 = 13339$                                                         | 13339             |

The contents of paragraphs of the additional supplementary affidavit affirmed on 20.04.2023 would reveal that *'the total number of excluded candidates is now 713 (2+559+81+71) instead of 1463'*.

36. The entire complexation of the controversy between the parties on the relative merits of their cases depended upon the steps taken by the Commission in terms of the order passed in WP No. 5189 (W) of 2018 (*Nandini Singha Vs. State of West Bengal*) dated 16<sup>th</sup> January, 2019 which triggered and unsettled the merit list prepared by the Commission of all the candidates pursuant to the advertisement. Due to such reassessment of TET marks of all the candidates, the marks of a large number of candidates were altered. Such reassessment of 2,28,678 candidates caused immense prejudice to the candidates and had a cascading effect on the initial IL. Such reassessment of test result was thus sufficient for setting aside the entire recruitment process. The judgment dated 11<sup>th</sup> December, 2020 was not challenged by the Commission and complying with the directives contained in the said judgment, the process of verification of documents was initiated by the Commission on and from 4<sup>th</sup> January, 2021 and after the conclusion of the said process IL list was published on 21<sup>st</sup> June, 2021. The names of the applicants in CAN 60 of 2023 featured in both the interview lists dated 4<sup>th</sup> October, 2019 as well as 21<sup>st</sup> June, 2021. The said interview list dated 21<sup>st</sup> June, 2021, however, did not disclose the breakup of marks of the candidates. Such fact was brought to the notice of the learned single Judge in course of hearing of the writ petitions from which the present appeals arise and by an order dated 2<sup>nd</sup> July, 2021, the Commission was directed to

disclose the breakup of marks. Such direction was duly complied with and the Commission published a fresh IL on 8<sup>th</sup> July, 2021. After the revised interview list was placed before the learned single Judge, the writ petitions were disposed of 9<sup>th</sup> July, 2021 with liberty to the unsuccessful candidates to approach the Commission by filing representations. Aggrieved thereby, the present appeals were preferred.

37. Records would reveal that out of 1588 candidates called for interview after grievance redressal hearing, only 1507 candidates appeared. The argument as advanced towards migration of reserved category candidates at the time of interview is not supported with appropriate pleading. In writ petitions involving adversarial claims a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and relief has to be granted to the parties strictly based on their pleadings and no relief can be granted beyond the scope of the petitions. Such argument was also advanced for the first time in course of hearing of the appeals on 19<sup>th</sup> May, 2023. There is no allegation that in the selection process proceeded with by the Commission in terms of the judgment dated 11<sup>th</sup> December, 2020, the Commission had again reassessed the TET marks. The unsuccessful candidates had again sought to frustrate the selection process since the results are not palatable to them. Exercising the authority of judicial review this Court cannot sit in appeal over such assessment and cannot convert judicial review proceedings into an inquisitorial one.

38. Mr. Mukherjee learned senior advocate appearing for the Commission has, however, not been able to justify the act of the Commission towards rechecking of the documents of the candidates, who appeared in the personality test (14052 candidates), '*after completion of the interviews*' as stated in the supplementary affidavit affirmed on 27<sup>th</sup> March, 2023 which runs as follows :

*'After completion of the interviews of all eligible candidates the Commission took up the task to recheck various aspects of each of the aforesaid 14052 candidates. The said exercise included a complete re-evaluation/scrutiny of all relevant documents including the scanned copies of the original OMRs of the candidates who participated in the TET, 2015 by an independent agency.....'.*

39. Upon such re-evaluation initially 1463 (2 - for mismatch of class category + 559 - for mismatch of marks + 902 - for defaced OMR sheets) were excluded. Upon further revision and perusal of records of 902 candidates, 750 candidates were brought within the zone of consideration and accordingly,  $1463 - 750 = 713$  were ultimately excluded. Such exclusion is not sustainable in law and consequently the said candidates also come within the zone of consideration. As there are in total 14,339 vacancies there cannot be any hindrance towards inclusion of all the candidates called for PT being 14,052 candidates in the merit list as against 14,339 vacancies.

40. In our opinion, the Commission had no jurisdiction to re-evaluate or recheck or scrutinize various aspects of each of the aforesaid 14052

candidates by an independent agency after completion of the PT. Such act is thus not sustainable in law and is set aside.

41. Accordingly, this Court directs the Commission to prepare and publish the final merit list and the panel in terms of Rule 12 (5) and Rule 12 (6) of the 2016 Rules respectively of the 14,052 candidates, in accordance with law within a period of four weeks from date.

42. Within a period of four weeks thereafter the Commission shall hold counselling and recommend all the 14,052 candidates, who appeared in the PT. Upon such recommendation, the appointment letters shall be issued to the said candidates by the competent authority within a period of four weeks thereafter, in accordance with law.

43. All the respondents/authorities shall ensure that the above directions are complied with within the period as stipulated above.

44. With the above observations and directions, the appeals and all connected applications are disposed of.

45. There shall, however, be no order as to costs.

46. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

**(Partha Sarathi Chatterjee, J.)**

**(Tapabrata Chakraborty, J.)**